

NO. 25532

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
DAVID FALEAFINE, Defendant-Appellant,
and JOLENE MATTOS, Defendant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 02-1-0867)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Lim and Foley, JJ.)

Defendant-Appellant David Faleafine (Faleafine) appeals the Judgment filed on December 2, 2002 in the Circuit Court of the First Circuit (circuit court).¹ Faleafine was convicted of Burglary in the First Degree, in violation of Hawaii Revised Statutes (HRS) § 708-810(1)(c) (1993), and Robbery in the First Degree, in violation of HRS § 708-840(1)(b) (Supp. 2003).

On appeal, Faleafine contends the circuit court erred by (1) allowing the use of a statement made by a non-testifying co-defendant in violation of his right to confrontation, as stated in Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620 (1968); and (2) denying his motion for judgment of acquittal, as no reasonable jury could have found him guilty of Robbery in the First Degree.

¹ The Honorable Karen S. S. Ahn presided.

Upon careful review of the record and the briefs submitted by the parties, we hold as follows:

(1) The circuit court did not err by allowing the use of the confession made by a non-testifying co-defendant because (a) the remark in question was not a "powerfully incriminating" statement as described in Bruton, 391 U.S. at 135-36, 88 S. Ct. at 1628; (b) despite Faleafine's contentions, there was no indication that this remark "more than any other evidence" "directly and pointedly" implicated him in any of the offenses charged; on the contrary, far more persuasive evidence was produced by witnesses whose testimony Faleafine had ample opportunity to test through cross-examination. See State v. Pastushin, 58 Haw. 299, 300 & 303, 568 P.2d 504, 506 (1977); and (c) the remark in question did not mention Faleafine by name nor make reference to his existence, and, as such, it was not facially incriminating and did not present a substantial risk that the circuit court's limiting instructions to the jury would be ineffective. See State v. Torres, 70 Haw. 219, 223, 768 P.2d 230, 233 (1989).

(2) The circuit court did not err in denying Faleafine's motion for judgment of acquittal because there was sufficient evidence, regarding the charge of Robbery in the First Degree, for a reasonable jury to find that Faleafine was guilty beyond a reasonable doubt. See State v. Timoteo, 87 Hawai'i 108,

112-13, 952 P.2d 865, 869-70 (1997); State v. Padilla, 57 Haw.
150, 157, 552 P.2d 357, 362 (1976).

Therefore,

IT IS HEREBY ORDERED that the Judgment filed on
December 2, 2002 in the Circuit Court of the First Circuit is
affirmed.

DATED: Honolulu, Hawai'i, August 23, 2004.

On the briefs:

Michael G.M. Ostendorp
and Shawn A. Luiz
(Law Office of Michael
G.M. Ostendorp),
for defendant-appellant.

Chief Judge

Bryan K. Sano,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for plaintiff-appellee.

Associate Judge

Associate Judge